

*Ropers Majeski Kohn & Bentley  
A Professional Corporation  
San Francisco*

THOMAS H. CLARKE, JR. (SBN 47592)  
ANDREW M. WOLFE (SBN 114076)  
TIMOTHY A. DOLAN (SBN 209674)  
ROPER, MAJESKI, KOHN & BENTLEY  
201 Spear Street, Suite 1000  
San Francisco, CA 94105-1667  
Telephone: (415) 543-4800  
Facsimile: (415) 972-6301  
Email: tclarke@rmkb.com  
awolfe@rmkb.com  
tdolan@rmkb.com

Attorneys for Plaintiff  
SAMUEL DIGIACOMO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAMUEL DIGIACOMO,  
Plaintiff,

v.

EX'PRESSION CENTER FOR NEW  
MEDIA, INC., d/b/a EX'PRESSION  
COLLEGE FOR DIGITAL ARTS, and  
Does 1 through 100,  
Defendant.

CASE NO. 08-cv-01768 MHP

**DECLARATION OF SAMUEL  
DIGIACOMO IN SUPPORT OF  
OPPOSITION TO MOTION TO COMPEL  
ARBITRATION AND TO DISMISS OR,  
ALTERNATIVELY, TO STAY CASE**

Date: September 8, 2008  
Time: 2:00 p.m.  
Location: Courtroom 15, 18th Floor  
450 Golden Gate Ave.  
San Francisco, CA 94102  
Judge: Hon. Marilyn Hall Patel

I, Samuel DiGiacomo, declare:

1. I am an adult and the plaintiff in this action.

2. The facts set forth in this Declaration are based on my personal knowledge; if called as a witness, I could testify under oath to the facts as set forth in this Declaration.

3. On September 18, 2006, I had an appointment with Klint Schahrer in the Admissions Office of Ex'pression Center for New Media, Inc., d/b/a Ex'pression College for Digital Arts (herein, "Ex'pression College"), defendant in this action; I was accompanied to the appointment by my mother, Jacqueline DiGiacomo. The purpose of the appointment was to fill

1 out the application forms for Ex'pression College and to take a test related to being admitted to  
2 the school.

3 4. I have been diagnosed with Asperger's Syndrome (a type of Autism) and Bipolar  
4 Disorder. I disclosed these disorders on the Ex'pression College Student Health Notice, which  
5 was one of the forms that I filled out as part of the application process. I also listed the  
6 medications that had been prescribed for me and that I was taking (Depakote and Zypraxa); I  
7 listed my mother as the emergency contact person on the Notice. I was told that one copy of the  
8 Student Health Notice went to the Admissions office and one to the Registrar; one copy was  
9 given to me. A true and correct copy of the copy of the Student Health Notice that I filled out and  
10 was given is attached to this Declaration as Exhibit A.

11 5. When I was handed the Enrollment Form, I was asked to initial or sign my name in  
12 seven different places. I initialed and signed in the places that Mr. Schahrer told me to sign and  
13 initial. At no time did Mr. Schahrer explain to me that in applying to Ex'pression College I was  
14 giving up my legal right to sue the Ex'pression College in court if a dispute were to arise and that

15 the use of arbitration would be the sole means to resolve any dispute. Mr. Schahrer did not  
16 explain to me anything about the arbitration process that was set forth in the Enrollment Form,  
17 nor of the costs or procedures associated with this type of arbitration. I did not receive any  
18 written information about the arbitration process. A true and correct copy of the copy of the  
19 Enrollment Form that I filled out and was given is attached to this Declaration as Exhibit B.

20 6. Although I initialed the paragraph in the Enrollment Form that states that I was  
21 given a copy of the "complaint and grievance procedure", I did not receive a copy of that  
22 document or any other "complaint and grievance procedure" document of any type. Mr. Schahrer  
23 never explained to me the difference between the "complaint and grievance procedure" and the  
24 arbitration provision at any time.

25 7. I trusted Mr. Schahrer to tell me that significance of the papers that I was signing  
26 and initialing, especially given that my disorders can interfere with my ability to understand and  
27 appreciate complex legal issues and documents. Because of my disorders, I went to an alternative  
28

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1 high school for two years, and was then home-schooled for a year; I ultimately received a high  
 2 school diploma. I very much wanted to attend Ex'pression College in order to better myself and  
 3 obtain a job that I would like and that would pay me enough to live independently and without  
 4 government support.

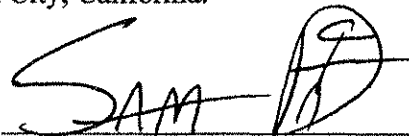
5 8. During my interview by Ex'pression, I was given a "screening" exam. The  
 6 screening has two parts. One part was a language competency test. The other part involved  
 7 artistic ability. My recollection is that I was asked to draw a sketch of a human hand to determine  
 8 if I had an appropriate perception of depth and shading.

9 9. Much to the surprise of my mother and myself, I was accepted for admission after  
 10 I filled out the forms and took the screening test. Afterwards, I went with my mother to the  
 11 financial aid office. I started school on September 27.

12 10. I successfully completed four semesters at Ex'pression. They had an accelerated  
 13 schedule so a semester was shorter than at a state college or university. I was expelled after  
 14 completion of four semesters on April 7, 2007.

15 I declare under penalty of perjury under the laws of the State of California that the  
 16 foregoing is true and correct.

17 Dated this 17<sup>th</sup> day of August, 2008 at Union City, California.

18   
 19 SAMUEL DIGIACOMO

# Exhibit A

# student health NOTICE



Ex'pression College  
for Digital Arts  
6601 Shellmound Street  
Emeryville, CA 94608

Student Name: Di Giacomo SAMUEL  
LAST FIRST M.I.  
Student Address: 4735 LUKE LINE  
STREET ADDRESS / PO BOX # APT. #  
UNION CITY CA 94587  
CITY STATE ZIP  
Telephone #: (510) 487-1734 Birth date: \_\_\_\_\_

## FAMILY PHYSICIAN

Name: \_\_\_\_\_  
LAST FIRST M.I.  
Address: \_\_\_\_\_  
STREET ADDRESS / PO BOX # APT. #  
Address: \_\_\_\_\_  
CITY STATE ZIP  
Telephone #: \_\_\_\_\_ Message Phone #: \_\_\_\_\_

## IN AN EMERGENCY, NOTIFY

Name: DiGiorgio Jacqueline D.  
LAST FIRST M.I.  
Address: 4735 Louise Ln.  
STREET ADDRESS / PO BOX # APT. #  
Address: Union City CA 94587  
CITY STATE ZIP  
Telephone #: 415 661-6907 Message Phone #: 510 487-1734

## PART A: MEDICAL HISTORY

Please list any health-related problems or conditions for which you are currently under a physician's care:

Aspergers Syndrome / Bipolar

Please list any prescribed medications you are currently taking under a physician's care:

Depakote Zypaxa

## PART B: STATEMENT OF HEALTH

I affirm that the information above is true to the best of my knowledge and that I am in good health and able to complete the above named course of study.

Student signature: Samuel (Signature) Date: 9/18/06

This Student Health Notice has been reviewed with \_\_\_\_\_  
and based on his/her evidence of good health he/she  
has been admitted to Ex'pression College for Digital Arts.

School Official Signature: (Signature) Date: 9/18/06

# Exhibit B



# enrollment AGREEMENT



Ex'pression College  
for Digital Arts  
6601 Shellmound Street  
Emeryville, CA 94608

This agreement is made on the 18 day of September 2008 by and between EX'PRESSION COLLEGE FOR DIGITAL ARTS, herein referred to as ECDA and SAMUEL DIGICOMMO, herein referred to as the STUDENT.

Student Address: 4735 LOUISE LANE  
STREET ADDRESS/PO BOX  
Union City CA 94507  
CITY STATE ZIP  
Student Phone Number: (510) 457-1724

This enrollment agreement, when signed by the student and accepted by the school is a legally binding agreement.

Ex'pression College for Digital Arts is located at 6601 Shellmound Street, Emeryville, CA 94608. All instruction is provided at this address.

Any questions or problems concerning this school which have not been satisfactorily answered or resolved by the school should be directed to the Bureau of Private Postsecondary and Vocational Education, 1625 North Market Blvd., Suite S202, Sacramento, CA 95834.

Student's Initials: SD I have been given a copy of the complaint and grievance procedure.

## 1. ENROLLMENT INFORMATION:

1.1 The student is enrolling in the program marked below, which is \_\_\_\_\_ academic months. Four Academic Years are required for completion of a Bachelor of Applied Science Degree.

☐ Bachelor of Applied Science in Motion Graphic Design (4 Academic Years)

ECDA's Motion Graphic Design Program develops students' knowledge and skills through an intensive series of visual design, animation, interactive and motion graphics theory courses. A total of \_\_\_\_\_ Semester Credit Units are required to complete the program.

☒ Bachelor of Applied Science in Animation and Visual Effects (4 Academic Years)

ECDA's Animation and Visual Effects Program is designed to enhance the student's knowledge and skills through an intensive series of courses including 3D modeling and animation, texture and lighting, compositing, digital film and video effects, graphics for the Internet and more. A total of 134 Semester Credit Units are required to complete the program.

☐ Bachelor of Applied Science in Sound Arts (4 Academic Years)

ECDA's Sound Arts Program offers students the opportunity to take part in numerous recording sessions, to experience mixing for CD release, to lock audio for picture, to learn surround sound, to learn DVD authoring, and many other technologies. Students explore first-hand numerous live sound and lighting applications, acoustical design, developing an understanding of the psychology of the studio, and much more. A total of \_\_\_\_\_ Semester Credit Units are required to complete the program.

1.2 Please see the College catalog for detailed program descriptions.

Student Initials: SD I have received a College catalog.

1.3 The starting date for the program of enrollment is 9/27/08

## 2. CLASS TIMES

2.1 Although most classes occur between the hours of 8:00 am and 6:00 pm, ECDA is a 24-7 facility; labs and lectures may be scheduled accordingly.

## 3. GRADUATION REQUIREMENTS AND DOCUMENTS AWARDED

3.1 To receive a degree from ECDA, a student must complete the following:

- 1) Must have achieved a minimum cumulative academic grade of 71%
- 2) Must have a minimum 85% attendance for class
- 3) Must have successfully completed all applicable courses

- 4) Must have fulfilled all financial responsibilities with regard to ECDA and be in good standing
- 5) Must complete an exit interview with the career development department
- 6) Must complete the last 25% of his/her education on the main campus at ECDA.

3.2 When the student has completed all graduation requirements, the institution will award a Bachelor of Applied Science Degree.

## 4. TERMS AND CONDITIONS

4.1 Eligible reasons for delaying a start after a student has already enrolled are:

- 1) Family death or serious illness
- 2) Uncontrolled events, natural disasters or
- 3) Military service. If a student must delay his/her start, he/she must notify the Admissions Department in writing at least 10 days prior to the scheduled start date. The start must be rescheduled within six months.

4.2 ECDA reserves the right to make adjustments in the official calendar of start dates. Such alterations will be officially announced no later than 3 months before the change occurs except when a change must be made due to an unforeseen event or a natural disaster. Because ECDA's refund policy is based on the time that classes have been in session, such changes will have no impact on the refund policy and its impact on students.

4.3 ECDA reserves the right to make changes in programs, materials, schedules, faculty and staff when such changes are in the best interest of the student and/or the institution. Changes in programs and schedules may alter a student's expected graduation date. Students will be responsible for fulfilling graduation requirements in effect when a student has enrolled, reenrolled after withdrawing, or been reinstated after a dismissal. Additional tuition may be required for coursework that is required because of such an enrollment change.

4.4 ECDA reserves the right to terminate this agreement in the event of:

- 1) violation of the standards of conduct
- 2) destruction of property by the student
- 3) non-payment of tuition & fees
- 4) unsatisfactory academic progress
- 5) poor attendance

4.5 The student's dissatisfaction with or non-receipt of educational services offered by ECDA does not excuse the student from repayment of any private loan, state loan or grant, federal loan, SLS, or other loan whatsoever made to the student for enrollment and completion of training at ECDA.

4.6 ECDA offers occupational training, not employment. ECDA provides placement assistance, but makes no guarantee of job placement or employment.

Student Initials: SD I have received a copy of the school's Performance Fact Sheet, which details completion and placement statistics.

## 5. BUYER'S RIGHT TO CANCEL

5.1 The student may terminate this agreement by giving written notice by midnight of the fifth business day following the date of this agreement to the Office of the VP of Admissions, Ex'pression College for Digital Arts, 6601 Shellmound Street, Emeryville, CA 94608.

5.2 Students who have not visited the school prior to enrollment will have the opportunity to withdraw without penalty within five business days following either the regularly scheduled orientation or following a tour of the school facilities and inspection of equipment where training and services are provided.

Student Initials: SD I have had a tour of the school.

**6. ARBITRATION AGREEMENT**

- 6.1 Any dispute arising from enrollment at Ex'pression College for Digital Arts, no matter how described, pleaded or styled, shall be resolved by binding arbitration under the Federal Arbitration Act conducted by the American Arbitration Association ("AAA") at Emeryville, California, under its Commercial Rules. All determinations as to the scope, enforceability of this Arbitration Agreement shall be determined by the Arbitrator, and not by a court. The award rendered by the arbitrator may be entered in any court having jurisdiction.

Student Initials: SV I have read and understand the Arbitration Agreement.

**7. REFUND POLICY****7.1 Cancellation or Withdrawal Prior to Start of Instruction**

The school will refund all charges less \$95 for the non-refundable application fee (\$10 for Veterans) if the enrollment agreement is cancelled prior to the first day of instruction or if a student withdraws within five days after orientation.

**7.2 Withdrawal or Termination Prior to Completion of Enrollment Period**

If a student wishes to withdraw from ECDA he/she must make notification in writing to the Office of the Registrar at 6601 Shellmound St. Emeryville, CA 94608. If the student withdraws he/she will receive a pro-rata refund if the student has completed 60% or less of the academic year for which the student was charged. If the student has completed more than 60% of the academic year for which the student was charged, the tuition is considered earned and the student will receive no refund. Refunds will be calculated on the basis of the last day of actual attendance. Refunds will be paid within 30 days following the date the student notifies the Office of the Registrar of withdrawal or if the student is terminated from school a refund will be paid within 30 days following the date the student was notified of termination. A non-refundable Administrative Fee of \$95 will be charged for all students who withdraw or are terminated prior to completion of the enrollment period. The method for calculating a pro-rata refund is:

Total tuition charged for the academic year / total number of clock hours for the academic year = per clock hour tuition.

Per clock hour tuition x number of clock hours incurred  
= total tuition owed by student.

Total tuition owed by student + administrative fee  
= total owed by student.

Total tuition paid for academic year - total owed by student  
= refund amount.

The above policy complies with State of California requirements.

**7.3 Return of Federal Funds**

Refunds are allocated to financial sources in accordance with Federal Department of Education regulations. Regulations require refunds for students who receive Federal grants and/or loans and withdrew during their period of enrollment to be returned to the Federal Government. Additional information on return of Federal Funds is available through the Financial Aid Office.

**8. STUDENT TUITION RECOVERY FUND**

- 8.1 As of January 1, 2002, California Education Code Section 94945 requires all colleges in the State of California licensed by the Bureau of Private Postsecondary and Vocational Education (BPPVE) to collect a fee from every new student to be remitted to the California Student Tuition Recovery Fund (STRF). This fund is administered by the State of California's BPPVE. The STRF assessment rate for enrollment agreements signed on or after January 1, 2003 is \$2.50 per \$1000 of tuition charged (rounded to the nearest 1,000). Based on ECDA's tuition of \$ NA your STRF fee is \$ NA. Non-Californian residents or recipients of third party payor tuition are not eligible for protection under and recovery from the Student Tuition Recovery Fund and are not required to pay the STRF fee. The STRF fee is due on the start date, unless the State of California has determined that no assessment shall be levied pursuant to California Education Code Section 94945.

**9. TUITION, FEES, METHOD AND TERMS OF PAYMENT****9.1 Tuition & Fees**

- Tuition for academic year 1 for the program of enrollment is \$ 16,950.
- Application Fee of \$95 or \$10 for Veterans (For new students only, to be submitted with Application for Admission. This is a non-refundable fee)
- Returned Check Fee of \$50 (Charged for all checks returned for non-sufficient funds. The student is responsible for all late payment fees and collection costs for past due balances and will pay bank fees and charges for returned checks.)

- Late fee of \$50 (W 0 charged if a payment is five or more days late. This is a non-refundable fee.)
- Installment Fee of \$25 per installment (if the student chooses payment Option 3. This is a non-refundable fee.)

Tuition includes all materials, books (General Education books are the property of ECDA and must be returned), and equipment required for the entire program such as: associated course books, art supplies, and relevant materials. Charges for repeated courses are not included in the above and are calculated at the per credit unit rate effective at the time of re-take. The tuition and other charges noted above are solely for one academic year. In order to complete the program of enrollment, it is necessary that the student pay tuition for every remaining academic year required to complete the program. (Four academic years are required for completion of a Bachelor of Applied Science Degree.)

- 9.2 The school reserves the right to change tuition rates. The tuition rates quoted in this enrollment agreement will remain in effect only for one academic year. Tuition for each succeeding academic year will be charged at the published tuition rate for that year. Changes in tuition will be announced five (5) weeks before they become effective. If a student withdraws and reenters or is reinstated after a dismissal he/she may also be subject to new tuition rates. Students who have prepaid tuition for the entire program will have no change in tuition unless they withdraw and reenter or are reinstated after a dismissal.
- 9.3 The student will meet with the Financial Aid Office before the beginning of each academic year and review payment options and student loan information. Payment amounts and due dates are based on the payment option chosen by the student. If the student elects a payment plan, it will be in compliance with the Federal Truth in Lending retail installment requirements and will become part of this enrollment agreement.
- 9.4 All payments must be in US dollars and made by check, money order, or cash to Ex'pression College for Digital Arts and are due in accordance with the payment option chosen.

**10. NOTICE CONCERNING TRANSFERABILITY OF UNITS AND DEGREES EARNED AT OUR SCHOOL**

Units you earn in our degree program in most cases will probably not be transferable to any other college or university. For example if you entered our school as a freshman, you will still be a freshman if you enter another college or university at some time in the future even though you earned units here at our school. In addition, if you earn a degree, diploma, or certificate in our degree program, in most cases it will probably not serve as a basis for obtaining a higher level degree at another college or university.

Student Initials: AD I have read and understand the Notice Concerning Transferability of Units and Degrees Earned at Ex'pression.

My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies and arbitration clause have been clearly explained to me. I have received a copy of this agreement.

Signature of Student: Samuel D DATE: 8/18/08  
Signature of Parent or Guardian: D. Anna Kidd DATE: 8/18/08  
Signature of School Official: [Signature] DATE OF ACCEPTANCE: 8/18/08